

1 **BEFORE THE BOARD OF ENVIRONMENTAL REVIEW**
2 **OF THE STATE OF MONTANA**

3 In the matter of the amendment) **PRESIDING OFFICER**
4 **REPORT**
5 of ARM 17.30.502, 17.30.619,)
6 17.30.702, 17.30.715,)
7 17.30.1001, 17.30.1006 and)
8 17.30.1007 pertaining to)
9 definitions, incorporation by)
10 reference, criteria for)
11 determining nonsignificant)
12 changes in water quality,)
13 standards for ground water and)
14 sample collection,)
15 preservation and analysis)
16 methods)

11 **INTRODUCTION**

12 1. On November 19, 2002, I presided over and
13 conducted the public hearing held in Room 111 of the
14 Metcalf Building, 1520 East Sixth Avenue, Helena, Montana,
15 to take public comment on the above-captioned matter.
16 Notice of the hearing was contained in 2002 Montana
17 Administrative Register (MAR), Issue No. 19, MAR Notice
18 No. 17-173, published on October 17, 2002, at pages 2713-
19 2716. A copy of the notice is attached to this report.

20 2. The hearing began at about 10:30 a.m. and
21 concluded at about 10:50 a.m. The hearing was tape
22 recorded by Petrina Horne of DEQ.

23 3. I announced that persons at the hearing would be
24 given an opportunity to submit their data, views, or
25 arguments concerning the proposed action, either orally or
26 in writing.
27

1 4. At the hearing I identified and summarized the
2 MAR notice, stated that copies of the MAR notice were
3 available from DEQ, read the Notice of Function of
4 Administrative Rule Review Committee as required by Mont.
5 Code Ann. § 2-4-302(7)(a), informed the persons at the
6 hearing of the rulemaking interested persons list and of
7 the opportunity to have their names placed on that list,
8 recited the authority to make the proposed amendments,
9 announced the opportunity to present matters at the
10 hearing or in writing, as stated in the MAR notice, and
11 explained the order of presentation.

12 5. At the conclusion of the hearing, I announced
13 that the proposed rulemaking was expected to be considered
14 by the Board at its first regular meeting in 2003.

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16 SUMMARY OF HEARING

17 6. Christian Levine, Water Quality Specialist, DEQ,
18 submitted a written statement and made an oral summary of
19 his statement. Bromoxynil is a herbicide that is a class
20 C carcinogen. Using information from the EPA, DEQ
21 developed a standard for the chemical.

22 7. Claudia Massman, Attorney Specialist, DEQ,
23 submitted a written review of HB 521 and HB 311 and made
24 an oral summary of the review.

25 8. Donna Rise, Montana Department of Agriculture,
26 submitted a written statement and said that the Department
27 supports the proposed rulemaking.

1 9. No other person made an oral statement at the
2 hearing. Written statements received at the hearing are
3 attached to this report.
4

5 **SUMMARY OF ADDITIONAL WRITTEN MATERIALS**

6 10. Bayer Crop Science submitted a letter stating
7 that the water quality standard for Bromoxynil herbicide
8 is acceptable. Bayer also made suggestions about actions
9 in response to learning of a contamination.

10 11. Catherine A. Laughner submitted a letter
11 commenting that the edition of WQB-7 that is incorporated
12 by reference in the proposed amendment to ARM
13 17.30.502(14) was not available for 29 of the 30 days of
14 the public comment period. She wrote that the rule should
15 be re-noticed.

16 12. No other written comments were received. The
17 period to submit comments ended on November 27, 2002.
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19 **PRESIDING OFFICER COMMENTS**

20 13. The Board has jurisdiction to adopt rules for the
21 administration of Water Quality laws. Mont. Code Ann.
22 § 75-2-201, -401. The Board has jurisdiction to adopt
23 rules for the administration of the Montana Agricultural
24 Chemical Ground Water Protection Act, and to adopt numeric
25 standards for agricultural chemicals in ground water.
26 Mont. Code Ann. § 80-15-105, -201.

27 14. House Bill 521 (1995) generally provides that the

1 Board may not adopt a rule that is more stringent than
2 comparable federal regulations or guidelines, unless the
3 Board makes written findings after public hearing and
4 comment. There is no comparable federal regulation or
5 guideline for Bromoxynil. The proposed numeric standard
6 will protect designated uses of ground and surface water.
7 Therefore written findings are not necessary.

8 15. House Bill 311 (1995), the Private Property
9 Assessment Act, codified as Mont. Code Ann. § 2-10-101
10 through -105, provides that a state agency must complete a
11 review and impact assessment prior to taking an action
12 with taking or damaging implications. The proposed
13 amendments affect real property. A Private Property
14 Assessment Act Checklist was prepared in this matter. The
15 proposed amendments do not have taking or damaging
16 implications. Therefore, no further HB 311 assessment is
17 necessary.

18 16. The procedures required by the Montana
19 Administrative Procedure Act, including public notice,
20 hearing, and comment, have been followed.

21 17. The Board may adopt the proposed rule amendments,
22 or reject them, or adopt the rule amendments with
23 revisions not exceeding the scope of the public notice.

24 18. Under Mont. Code Ann. § 2-4-305(7), for any acts
25 in the rulemaking process to be valid, the Board must
26 publish a notice of adoption within six months of the date
27 the Board

1 published the notice of proposed rulemaking in the Montana
2 Administrative Register, or by April 17, 2003.

3 Dated this _____ day of December, 2002.

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6 THOMAS G. BOWE
Presiding Officer
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